

AMENDED IN SENATE JULY 15, 2004

AMENDED IN SENATE JULY 1, 2004

AMENDED IN SENATE JUNE 10, 2004

AMENDED IN ASSEMBLY APRIL 22, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3079

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Hancock, Jackson, Laird, Lieber, Longville, Montanez, and Steinberg)

March 11, 2004

An act to amend Sections 3110.5, 6222, and 7120 of the Family Code, to amend Sections 6103.2, 68085, 68115, 68502.7, 68926, 68927, 71622, 72190, and 77006.5 of, and to repeal Section 72407 of, the Government Code, and to amend Sections 366.21 and 16010.6 of the Welfare and Institutions Code, relating to the courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 3079, as amended, Committee on Judiciary. Courts: subordinate judicial officers: juvenile courts: trial court funding.

(1) Existing law establishes requirements with respect to court proceedings dealing with child custody and support, the emancipation of minors, and domestic violence.

This bill would make technical corrections to those provisions.

(2) Existing law provides that the Trial Court Budget Commission shall have certain responsibilities with respect to the allocation and reallocation of funds from the Trial Court Trust Fund to the courts.

However, the statutory authorization for the Trial Court Budget Commission was eliminated on January 1, 2002.

This bill would delete references to the Trial Court Budget Commission and provide that those responsibilities shall be performed by the Judicial Council.

(3) Existing law authorizes the Chair of the Judicial Council to extend certain court deadlines and to take other specified actions when emergency conditions exist.

This bill would additionally authorize the Chair of the Judicial Council to extend the duration of a temporary restraining order that would otherwise expire during the period of an emergency.

(4) Existing law imposes fees for filing a notice of appeal in a civil case and a petition for a writ within the original civil jurisdiction of a court of appeal or the Supreme Court. However, those fees may not be charged in appeals or petitions for writs involving juvenile cases or emancipation proceedings. Existing law also imposes a fee for filing a petition for hearing in a civil case in the Supreme Court.

Under this bill, none of those filing fees would apply to those appeals or petitions involving juvenile cases, emancipation proceedings, or proceedings under the Lanterman-Petris-Short Act.

(5) Existing law authorizes each trial court to establish and appoint subordinate judicial officers. Existing law specifically provides that a retired commissioner and, in certain counties, a retired traffic referee may be assigned to serve as a commissioner or traffic referee and shall be paid the difference between his or her retirement allowance and the full compensation of a commissioner or traffic referee, without reinstatement as a member of the retirement system.

This bill would authorize any retired subordinate judicial officer to be assigned to perform subordinate judicial duties for not more than 85% of the compensation of a retired judge and subject to any limits imposed by his or her retirement system on postretirement service.

(6) Existing law requires the social worker to file a report with the court prior to a hearing to review the status of a dependent child. The social worker must also provide a summary of his or her recommendation for disposition to, among others, any court-appointed child advocate, if the child has been removed from parental custody.

This bill would require the social worker to provide a copy of the report, including the recommendation for disposition, to any court-appointed child advocate prior to the hearing in all cases. By expanding the duties of social workers, the bill would create a



state-mandated local program. The bill would also make a clarifying change with respect to a rule of court relating to the attorney of a child in a dependency proceeding.

(7) *This bill would incorporate additional changes to Section 3110.5 of the Family Code proposed by AB 3081 contingent upon its prior enactment.*

(8) This bill would incorporate additional changes to Section 366.21 of the Welfare and Institutions Code proposed by AB 2807 contingent upon its prior enactment.

~~(8)~~

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3110.5 of the Family Code is amended
2 to read:

3 3110.5. (a) No person may be a court-connected or private
4 child custody evaluator under this chapter unless the person has
5 completed the domestic violence and child abuse training program
6 described in Section 1816 and has complied with Rules 5.220 and
7 5.230 of the California Rules of Court.

8 (b) (1) On or before January 1, 2002, the Judicial Council shall
9 formulate a statewide rule of court that establishes education,
10 experience, and training requirements for all child custody
11 evaluators appointed pursuant to this chapter, Section 730 of the
12 Evidence Code, or Section 2032 of the Code of Civil Procedure.

13 (A) The rule shall require a child custody evaluator to declare
14 under penalty of perjury that he or she meets all of the education,



1 experience, and training requirements specified in the rule and, if
2 applicable, possesses a license in good standing. The Judicial
3 Council shall establish forms to implement this section. The rule
4 shall permit court-connected evaluators to conduct evaluations if
5 they meet all of the qualifications established by the Judicial
6 Council. The education, experience, and training requirements to
7 be specified for court-connected evaluators shall include, but not
8 be limited to, knowledge of the psychological and developmental
9 needs of children and parent-child relationships.

10 (B) The rule shall require all evaluators to utilize comparable
11 interview, assessment, and testing procedures for all parties that
12 are consistent with generally accepted clinical, forensic, scientific,
13 diagnostic, or medical standards. The rule shall also require
14 evaluators to inform each adult party of the purpose, nature, and
15 method of the evaluation.

16 (C) The rule may allow courts to permit the parties to stipulate
17 to an evaluator of their choosing with the approval of the court
18 under the circumstances set forth in subdivision (d). The rule may
19 require courts to provide general information about how parties
20 can contact qualified child custody evaluators in their county.

21 (2) On or before January 1, 2004, the Judicial Council shall
22 include in the statewide rule of court created pursuant to this
23 section a requirement that all court-connected and private child
24 custody evaluators receive training in the nature of child sexual
25 abuse. The Judicial Council shall develop standards for this
26 training that shall include, but not be limited to, the following:

27 (A) Children's patterns of hiding and disclosing sexual abuse
28 occurring in a family setting.

29 (B) The effects of sexual abuse on children.

30 (C) The nature and extent of child sexual abuse.

31 (D) The social and family dynamics of child sexual abuse.

32 (E) Techniques for identifying and assisting families affected
33 by child sexual abuse.

34 (F) Legal rights, protections, and remedies available to victims
35 of child sexual abuse.

36 (c) In addition to the education, experience, and training
37 requirements established by the Judicial Council pursuant to
38 subdivision (b), on or after January 1, 2005, no person may be a
39 child custody evaluator under this chapter, Section 730 of the

Evidence Code, or Section 2032 of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) does not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator may not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

SEC. 1.5. Section 3110.5 of the Family Code is amended to read:

3110.5. (a) No person ~~shall~~ may be a court-connected or private child custody evaluator under this chapter unless the person has completed the domestic violence and child abuse

1 training program described in Section 1816 and has complied with
2 Rules ~~1257.3~~ 5.220 and ~~1257.7~~ 5.230 of the California Rules of
3 Court.

4 (b) (1) On or before January 1, 2002, the Judicial Council shall
5 formulate a statewide rule of court that establishes education,
6 experience, and training requirements for all child custody
7 evaluators appointed pursuant to this chapter, Section 730 of the
8 Evidence Code, or *Chapter 15 (commencing with Section 2032*
9 *2032.010) of Title 4 of Part 4* of the Code of Civil Procedure.

10 (A) The rule shall require a child custody evaluator to declare
11 under penalty of perjury that he or she meets all of the education,
12 experience, and training requirements specified in the rule and, if
13 applicable, possesses a license in good standing. The Judicial
14 Council shall establish forms to implement this section. The rule
15 shall permit court-connected evaluators to conduct evaluations if
16 they meet all of the qualifications established by the Judicial
17 Council. The education, experience, and training requirements to
18 be specified for court-connected evaluators shall include, but ~~shall~~
19 not be limited to, knowledge of the psychological and
20 developmental needs of children and parent-child relationships.

21 (B) The rule shall require all evaluators to utilize comparable
22 interview, assessment, and testing procedures for all parties that
23 are consistent with generally accepted clinical, forensic, scientific,
24 diagnostic, or medical standards. The rule shall also require
25 evaluators to inform each adult party of the purpose, nature, and
26 method of the evaluation.

27 (C) The rule may allow courts to permit the parties to stipulate
28 to an evaluator of their choosing with the approval of the court
29 under the circumstances set forth in subdivision (d). The rule may
30 require courts to provide general information about how parties
31 can contact qualified child custody evaluators in their county.

32 (2) On or before January 1, 2004, the Judicial Council shall
33 include in the statewide rule of court created pursuant to this
34 section a requirement that all court-connected and private child
35 custody evaluators receive training in the nature of child sexual
36 abuse. The Judicial Council shall develop standards for this
37 training that shall include, but not be limited to, the following:

38 (A) Children's patterns of hiding and disclosing sexual abuse
39 occurring in a family setting.

40 (B) The effects of sexual abuse on children.

1 (C) The nature and extent of child sexual abuse.

2 (D) The social and family dynamics of child sexual abuse.

3 (E) Techniques for identifying and assisting families affected
4 by child sexual abuse.

5 (F) Legal rights, protections, and remedies available to victims
6 of child sexual abuse.

7 (c) In addition to the education, experience, and training
8 requirements established by the Judicial Council pursuant to
9 subdivision (b), on or after January 1, 2005, no person ~~shall~~ *may*
10 be a child custody evaluator under this chapter, Section 730 of the
11 Evidence Code, or *Chapter 15 (commencing with Section 2032*
12 *2032.010) of Title 4 of Part 4* of the Code of Civil Procedure unless
13 the person meets one of the following criteria:

14 (1) He or she is licensed as a physician under Chapter 5
15 (commencing with Section 2000) of Division 2 of the Business and
16 Professions Code and either is a board certified psychiatrist or has
17 completed a residency in psychiatry.

18 (2) He or she is licensed as a psychologist under Chapter 6.6
19 (commencing with Section 2900) of Division 2 of the Business and
20 Professions Code.

21 (3) He or she is licensed as a marriage and family therapist
22 under Chapter 13 (commencing with Section 4980) of Division 2
23 of the Business and Professions Code.

24 (4) He or she is licensed as a clinical social worker under
25 Article 4 (commencing with Section 4996) of Chapter 14 of
26 Division 2 of the Business and Professions Code.

27 (5) He or she is a court-connected evaluator who has been
28 certified by the court as meeting all of the qualifications for
29 court-connected evaluators as specified by the Judicial Council
30 pursuant to subdivision (b).

31 (d) Subdivision (c) ~~shall~~ *does* not apply in any case where the
32 court determines that there are no evaluators who meet the criteria
33 of subdivision (c) who are willing and available, within a
34 reasonable period of time, to perform child custody evaluations.
35 In those cases, the parties may stipulate to an individual who does
36 not meet the criteria of subdivision (c), subject to approval by the
37 court.

38 (e) A child custody evaluator who is licensed by the Medical
39 Board of California, the Board of Psychology, or the Board of
40 Behavioral Sciences shall be subject to disciplinary action by that

1 board for unprofessional conduct, as defined in the licensing law
2 applicable to that licensee.

3 (f) On or after January 1, 2005, a court-connected or private
4 child custody evaluator ~~shall~~ *may* not evaluate, investigate, or
5 mediate an issue of child custody in a proceeding pursuant to this
6 division unless that person has completed child sexual abuse
7 training as required by this section.

8 SEC. 2. Section 6222 of the Family Code, as amended by
9 Section 3 of Chapter 1009 of the Statutes of 2002, is amended to
10 read:

11 6222. (a) There is no filing fee for an application, a
12 responsive pleading, or an order to show cause that seeks to obtain,
13 modify, or enforce a protective order or other order authorized by
14 this division if the request for the other order is necessary to obtain
15 or give effect to a protective order. There is no fee for a subpoena
16 filed in connection with that application, responsive pleading, or
17 order to show cause.

18 (b) Fees otherwise payable by a petitioner to a law enforcement
19 agency for serving an order issued under this division may be
20 waived in any case in which the petitioner has requested a fee
21 waiver on the initiating petition and has filed a declaration that
22 demonstrates, to the satisfaction of the court, the financial need of
23 the petitioner for the fee waiver. If the petitioner is not eligible for
24 the fee waiver pursuant to this subdivision, he or she may be
25 eligible pursuant to paragraph (1) of subdivision (q) of Section
26 527.6 of the Code of Civil Procedure.

27 (c) The declaration required by subdivision (b) shall be on one
28 of the following forms:

29 (1) The form formulated and adopted by the Judicial Council
30 for litigants proceeding in forma pauperis pursuant to Section
31 68511.3 of the Government Code, but the petitioner is not subject
32 to any other requirements of litigants proceeding in forma
33 pauperis.

34 (2) Any other form that the Judicial Council may adopt for this
35 purpose pursuant to Section 6226.

36 (d) In conjunction with a hearing pursuant to this division, the
37 court may make an order for the waiver of fees otherwise payable
38 by the petitioner to a law enforcement agency for serving an order
39 issued under this division.

1 (e) This section shall remain in effect only until January 1,
2 2007, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2007, deletes or extends that date.

4 SEC. 3. Section 7120 of the Family Code is amended to read:

5 7120. (a) A minor may petition the superior court of the
6 county in which the minor resides or is temporarily domiciled for
7 a declaration of emancipation.

8 (b) The petition shall set forth with specificity all of the
9 following facts:

10 (1) The minor is at least 14 years of age.

11 (2) The minor willingly lives separate and apart from the
12 minor's parents or guardian with the consent or acquiescence of
13 the minor's parents or guardian.

14 (3) The minor is managing his or her own financial affairs. As
15 evidence of this, the minor shall complete and attach a declaration
16 of income and expenses as provided in Judicial Council form
17 FL-150.

18 (4) The source of the minor's income is not derived from any
19 activity declared to be a crime by the laws of this state or the laws
20 of the United States.

21 SEC. 4. Section 6103.2 of the Government Code, as amended
22 by Section 5 of Chapter 1009 of the Statutes of 2002, is amended
23 to read:

24 6103.2. (a) Section 6103 does not apply to any fee or charge
25 or expense for official services rendered by a sheriff or marshal in
26 connection with the levy of writs of attachment, execution,
27 possession, or sale. The fee, charge, or expense may be advanced
28 to the sheriff or marshal, as otherwise required by law.

29 (b) (1) Notwithstanding Section 6103, the sheriff or marshal,
30 in connection with the service of process or notices, may require
31 that all fees that a public agency, or any person or entity, is required
32 to pay under provisions of law other than this section, be prepaid
33 by a public agency named in Section 6103, or by any person or
34 entity, prior to the performance of any official act. This authority
35 to require prepayment shall include fees governed by Section
36 6103.5.

37 (2) This subdivision does not apply to the service of process or
38 notices in any action by the district attorney's office for the
39 establishment or enforcement of a child support obligation.

1 (3) This subdivision does not apply to a particular jurisdiction
2 unless the sheriff or marshal, as the case may be, imposes the
3 requirement of prepayment upon public agencies and upon all
4 persons or entities within the private sector.

5 (4) The requirement for prepayment of a fee deposit does not
6 apply to the orders or injunctions described in paragraph (1) of
7 subdivision (q) of Section 527.6 of the Code of Civil Procedure.
8 However, a sheriff, marshal, or constable may submit a billing to
9 the superior court for payment of fees in the manner prescribed by
10 the Judicial Council. The fees for service, cancellation of service,
11 and making a not found return may not exceed the amounts
12 provided in Sections 26721, 26736, and 26738, respectively, and
13 are subject to the provisions of Section 26731.

14 (c) This section shall remain in effect only until January 1,
15 2007, and as of that date is repealed, unless a later enacted statute,
16 that is enacted before January 1, 2007, deletes or extends that date.

17 SEC. 5. Section 68085 of the Government Code is amended
18 to read:

19 68085. (a) (1) There is hereby established the Trial Court
20 Trust Fund, the proceeds of which shall be apportioned at least
21 quarterly for the purpose of funding trial court operations, as
22 defined in Section 77003. Apportionment payments may not
23 exceed 30 percent of the total annual apportionment to the Trial
24 Court Trust Fund for state trial court funding in any 90-day period.

25 (2) The apportionment payments shall be made by the
26 Controller. The final payment from the Trial Court Trust Fund for
27 each fiscal year shall be made on or before August 31 of the
28 subsequent fiscal year.

29 (3) If apportionment payments are made on a quarterly basis,
30 the payments shall be on July 15, October 15, January 15, and
31 April 15. In addition to quarterly payments, a final payment from
32 the Trial Court Trust Fund for each fiscal year may be made on or
33 before August 31 of the subsequent fiscal year.

34 (4) Notwithstanding any other provision of law, in order to
35 promote statewide efficiency, the Judicial Council may authorize
36 the direct payment or reimbursement or both of actual costs from
37 the Trial Court Trust Fund or the Trial Court Improvement Fund
38 to fund administrative infrastructure within the Administrative
39 Office of the Courts, such as legal services, financial services,
40 information systems services, human resource services, and

1 support services, for one or more participating courts upon
2 appropriation of funding for these purposes in the annual Budget
3 Act. The amount of appropriations from the Trial Court
4 Improvement Fund under this subdivision may not exceed 20
5 percent of the amount deposited in the Trial Court Improvement
6 Fund pursuant to subdivision (a) of Section 77205. Upon prior
7 written approval of the Director of Finance, the Judicial Council
8 may also authorize an increase in any reimbursements or direct
9 payments in excess of the amount appropriated in the annual
10 Budget Act. For any increases in reimbursements or direct
11 payments within the fiscal year that exceed two hundred thousand
12 dollars (\$200,000), the Director of Finance shall provide
13 notification in writing of any approval granted under this section,
14 not less than 30 days prior to the effective date of that approval, to
15 the chairperson of the committee in each house of the Legislature
16 that considers appropriations, the chairpersons of the committees
17 and the appropriate subcommittees in each house of the
18 Legislature that consider the annual Budget Act, and the
19 Chairperson of the Joint Legislative Budget Committee, or not
20 sooner than whatever lesser time the Chairperson of the Joint
21 Legislative Budget Committee, or his or her designee, may in each
22 instance, determine. The direct payment or reimbursement of costs
23 from the Trial Court Trust Fund may be supported by the reduction
24 of a participating court's allocation from the Trial Court Trust
25 Fund to the extent that the court's expenditures for the program are
26 reduced and the court is supported by the program. The Judicial
27 Council shall provide the affected trial courts with quarterly
28 reports on expenditures from the Trial Court Trust Fund incurred
29 as authorized by this subdivision. The Judicial Council shall
30 establish procedures to provide for the administration of this
31 paragraph in a way that promotes the effective, efficient, reliable,
32 and accountable operation of the trial courts.

33 (b) Notwithstanding any other provision of law, the fees listed
34 in subdivision (c) shall all be deposited upon collection in a special
35 account in the county treasury, and transmitted monthly to the
36 Controller for deposit in the Trial Court Trust Fund.

37 (c) (1) Except as specified in subdivision (d), this section
38 applies to all fees collected pursuant to Sections 631.3, 116.230,
39 and 403.060 of the Code of Civil Procedure and Sections 26820.4,
40 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1,

1 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1,
2 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055,
3 72056, 72056.01, and 72060.

4 (2) If any of the fees provided for in this subdivision are
5 partially waived by court order, and the fee is to be divided
6 between the Trial Court Trust Fund and any other fund, the amount
7 of the partial waiver shall be deducted from the amount to be
8 distributed to each fund in the same proportion as the amount of
9 each distribution bears to the total amount of the fee.

10 (3) Any amounts transmitted by a county to the Controller for
11 deposit into the Trial Court Trust Fund from fees collected
12 pursuant to Section 27361 between January 1, 1998, and the
13 effective date of this paragraph shall be credited against the total
14 amount the county is required to pay to the state pursuant to
15 paragraph (2) of subdivision (b) of Section 77201 for the 1997–98
16 fiscal year.

17 (d) This section does not apply to that portion of a filing fee
18 collected pursuant to Section 26820.4, 26826, 26827, 72055, or
19 72056 which is allocated for dispute resolution pursuant to Section
20 470.3 of the Business and Professions Code, the county law library
21 pursuant to Section 6320 of the Business and Professions Code, the
22 Judges' Retirement Fund pursuant to Section 26822.3, automated
23 recordkeeping or conversion to micrographics pursuant to
24 Sections 26863 and 68090.7, and courthouse financing pursuant
25 to Section 76238. This section also does not apply to fees collected
26 pursuant to subdivisions (a) and (c) of Section 27361.

27 (e) This section applies to all payments required to be made to
28 the State Treasury by any county or city and county pursuant to
29 Section 77201, 77201.1, or 77205.

30 (f) Notwithstanding any other provision of law, no agency may
31 take action to change the amounts allocated to any of the funds
32 described in subdivision (a), (b), (c), or (d).

33 (g) Before making any apportionments under this section, the
34 Controller shall deduct, from the annual appropriation for that
35 purpose, the actual administrative costs that will be incurred under
36 this section. Costs reimbursed under this section shall be
37 determined on an annual basis in consultation with the Judicial
38 Council.

39 (h) Any amounts required to be transmitted by a county or city
40 and county to the state pursuant to this section shall be remitted to

the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance that is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(i) Upon receipt of any delinquent payment required pursuant to this section, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to $1\frac{1}{2}$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse to a county's general fund pursuant to this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(k) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council.

(l) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible.

SEC. 6. Section 68115 of the Government Code is amended to read:

68115. When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court location or locations within a county, the presiding judge may request and the Chair of the

Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

(a) Hold sessions anywhere within the county.

(b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No transfer may be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.

(c) Declare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(d) Declare that a date on which an emergency condition, as described in this section, prevented the court from conducting proceedings governed by Section 825 of the Penal Code, or Section 313, 315, 631, 632, 637, or 657 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(e) Extend the duration of any temporary restraining order that would otherwise expire because an emergency condition, as described in this section, prevented the court from conducting proceedings to determine whether a permanent order should be entered. The extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(f) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a

1 magistrate from 48 hours to not more than seven days, with the
2 number of days to be designated by the Chair of the Judicial
3 Council. This authorization shall be effective for 30 days unless it
4 is extended by a new request and a new order.

5 (g) Extend the time period provided in Section 859b of the
6 Penal Code for the holding of a preliminary examination from 10
7 court days to not more than 15 days.

8 (h) Extend the time period provided in Section 1382 of the
9 Penal Code within which the trial must be held by not more than
10 30 days, but the trial of a defendant in custody whose time is so
11 extended shall be given precedence over all other cases.

12 (i) Within the affected area of a county during a state of
13 emergency resulting from a natural or human-made disaster
14 proclaimed by the President of the United States or by the
15 Governor pursuant to Section 8625 of the Government Code,
16 extend the time period provided in Sections 313, 315, 632, and 637
17 of the Welfare and Institutions Code within which a minor shall be
18 given a detention hearing, with the number of days to be
19 designated by the Chair of the Judicial Council. The extension of
20 time shall be for the shortest period of time necessary under the
21 circumstances of the emergency, but in no event shall the time
22 period within which a detention hearing must be given be extended
23 to more than seven days. This authorization shall be effective for
24 30 days unless it is extended by a new request and a new order. This
25 subdivision shall apply only where the minor has been charged
26 with a felony.

27 (j) Within the affected county during a state of emergency
28 resulting from a natural or human-made disaster proclaimed by the
29 President of the United States or by the Governor pursuant to
30 Section 8625 of the Government Code, extend the time period
31 provided in Sections 334 and 657 of the Welfare and Institutions
32 Code within which an adjudication on a juvenile court petition
33 shall be held by not more than 15 days, with the number of days
34 to be designated by the Chair of the Judicial Council. This
35 authorization shall be effective for 30 days unless it is extended by
36 a new request and a new order. This subdivision shall apply only
37 where the minor has been charged with a felony.

38 SEC. 7. Section 68502.7 of the Government Code is amended
39 to read:

68502.7. Nothing in this chapter shall be construed to require the state in any fiscal year to provide money for trial court costs from any state fund that is in excess of the total amount available for disbursement from that fund during the fiscal year. The Judicial Council may reallocate moneys pursuant to Section 68502.5 if at any time during the fiscal year it determines that the amount available for disbursement from any state fund will be less than or greater than the amount already allocated from that fund for that fiscal year.

SEC. 8. Section 68926 of the Government Code is amended to read:

68926. The fee for filing a notice of appeal in a civil case appealed to a court of appeal is four hundred eighty-five dollars (\$485). The fee for filing a petition for a writ within the original civil jurisdiction of the Supreme Court is four hundred twenty dollars (\$420). The fee for filing a petition for a writ within the original civil jurisdiction of a court of appeal is four hundred eighty-five dollars (\$485). These fees are in full, for all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fees imposed by subdivision (b) of Section 68926.1 and Section 68927. The Judicial Council may make rules governing the time and method of payment of these fees, and providing for excuse therefrom in appropriate cases. A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or proceedings to declare a minor free from parental custody or control, or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

SEC. 9. Section 68927 of the Government Code is amended to read:

68927. The fee for filing a petition for review in a civil case in the Supreme Court after decision in a court of appeal is four hundred twenty dollars (\$420). A fee may not be charged for petitions for review from decisions in juvenile cases or proceedings to declare a minor free from parental custody or control or proceedings under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

1 SEC. 10. Section 71622 of the Government Code is amended
2 to read:

3 71622. (a) Each trial court may establish and may appoint
4 any subordinate judicial officers that are deemed necessary for the
5 performance of subordinate judicial duties, as authorized by law
6 to be performed by subordinate judicial officers. However, the
7 number and type of subordinate judicial officers in a trial court
8 shall be subject to approval by the Judicial Council. Subordinate
9 judicial officers shall serve at the pleasure of the trial court.

10 (b) The appointment or termination of a subordinate judicial
11 officer shall be made by order of the presiding judge or another
12 judge or a committee to whom appointment or termination
13 authority is delegated by the court, entered in the minutes of the
14 court.

15 (c) The Judicial Council shall promulgate rules establishing the
16 minimum qualifications and training requirements for subordinate
17 judicial officers.

18 (d) The presiding judge of a superior court may cross-assign
19 one type of subordinate judicial officer to exercise all the powers
20 and perform all the duties authorized by law to be performed by
21 another type of subordinate judicial officer, but only if the person
22 cross-assigned satisfies the minimum qualifications and training
23 requirements for the new assignment established by the Judicial
24 Council pursuant to subdivision (c).

25 (e) The superior courts of two or more counties may appoint the
26 same person as court commissioner.

27 (f) As of the implementation date of this chapter, all persons
28 who were authorized to serve as subordinate judicial officers
29 pursuant to other provisions of law shall be authorized by this
30 section to serve as subordinate judicial officers at their existing
31 salary rate, which may be a percentage of the salary of a judicial
32 officer.

33 (g) A subordinate judicial officer who has been duly appointed
34 and has thereafter been retired from service may be assigned by a
35 presiding judge to perform subordinate judicial duties consistent
36 with subdivision (a). The retired subordinate judicial officer shall
37 be subject to the limits, if any, on postretirement service prescribed
38 by the Public Employees' Retirement System, the county
39 defined-benefit retirement system, as defined in subdivision (f) of
40 Section 71624, or any other defined-benefit retirement plan from

1 which the retired officer is receiving benefits. The retired
2 subordinate judicial officer shall be compensated by the assigning
3 court at a rate not to exceed 85 percent of the compensation of a
4 retired judge assigned to a superior court.

5 SEC. 11. Section 72190 of the Government Code is amended
6 to read:

7 72190. Within the jurisdiction of the court and under the
8 direction of the judges, commissioners shall exercise all the
9 powers and perform all of the duties prescribed by law. At the
10 direction of the judges, commissioners may have the same
11 jurisdiction and exercise the same powers and duties as the judges
12 of the court with respect to any infraction or small claims action.
13 They shall be ex officio deputy clerks.

14 SEC. 12. Section 72407 of the Government Code is repealed.

15 SEC. 13. Section 77006.5 of the Government Code is
16 amended to read:

17 77006.5. As used in this chapter, “trial court funding” means
18 the amount of state funds provided for the operation of the trial
19 courts, as defined in Section 77003, appropriated in the Budget
20 Act, and allocated or reallocated by the Judicial Council.

21 SEC. 14. Section 366.21 of the Welfare and Institutions Code
22 is amended to read:

23 366.21. (a) Every hearing conducted by the juvenile court
24 reviewing the status of a dependent child shall be placed on the
25 appearance calendar. The court shall advise all persons present at
26 the hearing of the date of the future hearing and of their right to be
27 present and represented by counsel.

28 (b) Except as provided in Sections 294 and 295, notice of the
29 hearing shall be provided pursuant to Section 293.

30 (c) At least 10 calendar days prior to the hearing, the social
31 worker shall file a supplemental report with the court regarding the
32 services provided or offered to the parent or legal guardian to
33 enable him or her to assume custody and the efforts made to
34 achieve legal permanence for the child if efforts to reunify fail,
35 including, but not limited to, efforts to maintain relationships
36 between the child and individuals who are important to the child,
37 the progress made, and, where relevant, the prognosis for return
38 of the child to the physical custody of his or her parent or legal
39 guardian, and shall make his or her recommendation for
40 disposition. If the child is a member of a sibling group described



1 in paragraph (3) of subdivision (a) of Section 361.5, the report and
2 recommendation may also take into account those factors
3 described in subdivision (e) relating to the child's sibling group.
4 If the recommendation is not to return the child to a parent or legal
5 guardian, the report shall specify why the return of the child would
6 be detrimental to the child. The social worker shall provide the
7 parent or legal guardian, counsel for the child, and any
8 court-appointed child advocate with a copy of the report, including
9 his or her recommendation for disposition, at least 10 calendar
10 days prior to the hearing. In the case of a child removed from the
11 physical custody of his or her parent or legal guardian, the social
12 worker shall, at least 10 calendar days prior to the hearing, provide
13 a summary of his or her recommendation for disposition to any
14 foster parents, relative caregivers, and certified foster parents who
15 have been approved for adoption by the State Department of Social
16 Services when it is acting as an adoption agency in counties that
17 are not served by a county adoption agency or by a licensed county
18 adoption agency, community care facility, or foster family agency
19 having the physical custody of the child.

20 (d) Prior to any hearing involving a child in the physical
21 custody of a community care facility or a foster family agency that
22 may result in the return of the child to the physical custody of his
23 or her parent or legal guardian, or in adoption or the creation of a
24 legal guardianship, the facility or agency shall file with the court
25 a report containing its recommendation for disposition. Prior to the
26 hearing involving a child in the physical custody of a foster parent,
27 a relative caregiver, or a certified foster parent who has been
28 approved for adoption by the State Department of Social Services
29 when it is acting as an adoption agency or by a licensed adoption
30 agency, the foster parent, relative caregiver, or the certified foster
31 parent who has been approved for adoption by the State
32 Department of Social Services when it is acting as an adoption
33 agency in counties that are not served by a county adoption agency
34 or by a licensed county adoption agency, may file with the court
35 a report containing his or her recommendation for disposition. The
36 court shall consider the report and recommendation filed pursuant
37 to this subdivision prior to determining any disposition.

38 (e) At the review hearing held six months after the initial
39 dispositional hearing, the court shall order the return of the child
40 to the physical custody of his or her parent or legal guardian unless

1 the court finds, by a preponderance of the evidence, that the return
2 of the child to his or her parent or legal guardian would create a
3 substantial risk of detriment to the safety, protection, or physical
4 or emotional well-being of the child. The social worker shall have
5 the burden of establishing that detriment. The failure of the parent
6 or legal guardian to participate regularly and make substantive
7 progress in court-ordered treatment programs shall be prima facie
8 evidence that return would be detrimental. In making its
9 determination, the court shall review and consider the social
10 worker's report and recommendations and the report and
11 recommendations of any child advocate appointed pursuant to
12 Section 356.5; and shall consider the efforts or progress, or both,
13 demonstrated by the parent or legal guardian and the extent to
14 which he or she availed himself or herself of services provided.

15 Whether or not the child is returned to a parent or legal guardian,
16 the court shall specify the factual basis for its conclusion that the
17 return would be detrimental or would not be detrimental. The court
18 also shall make appropriate findings pursuant to subdivision (a) of
19 Section 366; and, where relevant, shall order any additional
20 services reasonably believed to facilitate the return of the child to
21 the custody of his or her parent or legal guardian. The court shall
22 also inform the parent or legal guardian that if the child cannot be
23 returned home by the 12-month permanency hearing, a proceeding
24 pursuant to Section 366.26 may be instituted. This section does not
25 apply in a case where, pursuant to Section 361.5, the court has
26 ordered that reunification services shall not be provided.

27 If the child was under the age of three years on the date of the
28 initial removal, or is a member of a sibling group described in
29 paragraph (3) of subdivision (a) of Section 361.5, and the court
30 finds by clear and convincing evidence that the parent failed to
31 participate regularly and make substantive progress in a
32 court-ordered treatment plan, the court may schedule a hearing
33 pursuant to Section 366.26 within 120 days. If, however, the court
34 finds there is a substantial probability that the child, who was under
35 the age of three years on the date of initial removal or is a member
36 of a sibling group described in paragraph (3) of subdivision (a) of
37 Section 361.5, may be returned to his or her parent or legal
38 guardian within six months or that reasonable services have not
39 been provided, the court shall continue the case to the 12-month
40 permanency hearing.



1 For the purpose of placing and maintaining a sibling group
2 together in a permanent home, the court, in making its
3 determination to schedule a hearing pursuant to Section 366.26 for
4 some or all members of a sibling group, as described in paragraph
5 (3) of subdivision (a) of Section 361.5, shall review and consider
6 the social worker's report and recommendations. Factors the
7 report shall address, and the court shall consider, may include, but
8 need not be limited to, whether the sibling group was removed
9 from parental care as a group, the closeness and strength of the
10 sibling bond, the ages of the siblings, the appropriateness of
11 maintaining the sibling group together, the detriment to the child
12 if sibling ties are not maintained, the likelihood of finding a
13 permanent home for the sibling group, whether the sibling group
14 is currently placed together in a preadoptive home or has a
15 concurrent plan goal of legal permanency in the same home, the
16 wishes of each child whose age and physical and emotional
17 condition permits a meaningful response, and the best interest of
18 each child in the sibling group. The court shall specify the factual
19 basis for its finding that it is in the best interest of each child to
20 schedule a hearing pursuant to Section 366.26 in 120 days for some
21 or all of the members of the sibling group.

22 If the child was removed initially under subdivision (g) of
23 Section 300 and the court finds by clear and convincing evidence
24 that the whereabouts of the parent are still unknown, or the parent
25 has failed to contact and visit the child, the court may schedule a
26 hearing pursuant to Section 366.26 within 120 days. If the court
27 finds by clear and convincing evidence that the parent has been
28 convicted of a felony indicating parental unfitness, the court may
29 schedule a hearing pursuant to Section 366.26 within 120 days.

30 If the child had been placed under court supervision with a
31 previously noncustodial parent pursuant to Section 361.2, the
32 court shall determine whether supervision is still necessary. The
33 court may terminate supervision and transfer permanent custody
34 to that parent, as provided for by paragraph (1) of subdivision (b)
35 of Section 361.2.

36 In all other cases, the court shall direct that any reunification
37 services previously ordered shall continue to be offered to the
38 parent or legal guardian pursuant to the time periods set forth in
39 subdivision (a) of Section 361.5, provided that the court may
40 modify the terms and conditions of those services.

1 If the child is not returned to his or her parent or legal guardian,
2 the court shall determine whether reasonable services that were
3 designed to aid the parent or legal guardian in overcoming the
4 problems that led to the initial removal and the continued custody
5 of the child have been provided or offered to the parent or legal
6 guardian. The court shall order that those services be initiated,
7 continued, or terminated.

8 (f) The permanency hearing shall be held no later than 12
9 months after the date the child entered foster care, as that date is
10 determined pursuant to subdivision (a) of Section 361.5. At the
11 permanency hearing, the court shall determine the permanent plan
12 for the child, which shall include a determination of whether the
13 child will be returned to the child's home and, if so, when, within
14 the time limits of subdivision (a) of Section 361.5. The court shall
15 order the return of the child to the physical custody of his or her
16 parent or legal guardian unless the court finds, by a preponderance
17 of the evidence, that the return of the child to his or her parent or
18 legal guardian would create a substantial risk of detriment to the
19 safety, protection, or physical or emotional well-being of the child.
20 The social worker shall have the burden of establishing that
21 detriment. The court shall also determine whether reasonable
22 services that were designed to aid the parent or legal guardian to
23 overcome the problems that led to the initial removal and
24 continued custody of the child have been provided or offered to the
25 parent or legal guardian. For each youth 16 years of age and older,
26 the court shall also determine whether services have been made
27 available to assist him or her in making the transition from foster
28 care to independent living. The failure of the parent or legal
29 guardian to participate regularly and make substantive progress in
30 court-ordered treatment programs shall be prima facie evidence
31 that return would be detrimental. In making its determination, the
32 court shall review and consider the social worker's report and
33 recommendations and the report and recommendations of any
34 child advocate appointed pursuant to Section 356.5, shall consider
35 the efforts or progress, or both, demonstrated by the parent or legal
36 guardian and the extent to which he or she availed himself or
37 herself of services provided, and shall make appropriate findings
38 pursuant to subdivision (a) of Section 366.

39 Whether or not the child is returned to his or her parent or legal
40 guardian, the court shall specify the factual basis for its decision.

1 If the child is not returned to a parent or legal guardian, the court
2 shall specify the factual basis for its conclusion that the return
3 would be detrimental. The court also shall make a finding pursuant
4 to subdivision (a) of Section 366.

5 (g) If the time period in which the court-ordered services were
6 provided has met or exceeded the time period set forth in
7 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
8 appropriate, and a child is not returned to the custody of a parent
9 or legal guardian at the permanency hearing held pursuant to
10 subdivision (f), the court shall do one of the following:

11 (1) Continue the case for up to six months for a permanency
12 review hearing, provided that the hearing shall occur within 18
13 months of the date the child was originally taken from the physical
14 custody of his or her parent or legal guardian. The court shall
15 continue the case only if it finds that there is a substantial
16 probability that the child will be returned to the physical custody
17 of his or her parent or legal guardian and safely maintained in the
18 home within the extended period of time or that reasonable
19 services have not been provided to the parent or legal guardian. For
20 the purposes of this section, in order to find a substantial
21 probability that the child will be returned to the physical custody
22 of his or her parent or legal guardian and safely maintained in the
23 home within the extended period of time, the court shall be
24 required to find all of the following:

25 (A) That the parent or legal guardian has consistently and
26 regularly contacted and visited with the child.

27 (B) That the parent or legal guardian has made significant
28 progress in resolving problems that led to the child's removal from
29 the home.

30 (C) The parent or legal guardian has demonstrated the capacity
31 and ability both to complete the objectives of his or her treatment
32 plan and to provide for the child's safety, protection, physical and
33 emotional well-being, and special needs.

34 For purposes of this subdivision, the court's decision to continue
35 the case based on a finding or substantial probability that the child
36 will be returned to the physical custody of his or her parent or legal
37 guardian is a compelling reason for determining that a hearing held
38 pursuant to Section 366.26 is not in the best interests of the child.

39 The court shall inform the parent or legal guardian that if the
40 child cannot be returned home by the next permanency review

1 hearing, a proceeding pursuant to Section 366.26 may be
2 instituted. The court may not order that a hearing pursuant to
3 Section 366.26 be held unless there is clear and convincing
4 evidence that reasonable services have been provided or offered to
5 the parent or legal guardian.

6 (2) Order that a hearing be held within 120 days, pursuant to
7 Section 366.26, but only if the court does not continue the case to
8 the permanency planning review hearing and there is clear and
9 convincing evidence that reasonable services have been provided
10 or offered to the parents or legal guardians.

11 (3) Order that the child remain in long-term foster care, but
12 only if the court finds by clear and convincing evidence, based
13 upon the evidence already presented to it, including a
14 recommendation by the State Department of Social Services when
15 it is acting as an adoption agency in counties that are not served by
16 a county adoption agency or by a licensed county adoption agency,
17 that there is a compelling reason for determining that a hearing
18 held pursuant to Section 366.26 is not in the best interest of the
19 child because the child is not a proper subject for adoption and has
20 no one willing to accept legal guardianship. For purposes of this
21 section, a recommendation by the State Department of Social
22 Services when it is acting as an adoption agency in counties that
23 are not served by a county adoption agency or by a licensed county
24 adoption agency that adoption is not in the best interest of the child
25 shall constitute a compelling reason for the court's determination.
26 That recommendation shall be based on the present circumstances
27 of the child and may not preclude a different recommendation at
28 a later date if the child's circumstances change.

29 If the court orders that a child who is 10 years of age or older
30 remain in long-term foster care at a group home, the court shall
31 determine whether the agency has made reasonable efforts to
32 maintain the child's relationships with individuals other than the
33 child's siblings who are important to the child, consistent with the
34 child's best interests, and may make any appropriate order to
35 ensure that those relationships are maintained.

36 (h) In any case in which the court orders that a hearing pursuant
37 to Section 366.26 shall be held, it shall also order the termination
38 of reunification services to the parent or legal guardian. The court
39 shall continue to permit the parent or legal guardian to visit the
40 child pending the hearing unless it finds that visitation would be

1 detrimental to the child. The court shall make any other
2 appropriate orders to enable the child to maintain relationships
3 with other individuals who are important to the child.

4 (i) Whenever a court orders that a hearing pursuant to Section
5 366.26 shall be held, it shall direct the agency supervising the child
6 and the licensed county adoption agency, or the State Department
7 of Social Services when it is acting as an adoption agency in
8 counties that are not served by a county adoption agency, to
9 prepare an assessment that shall include:

10 (1) Current search efforts for an absent parent or parents or
11 legal guardians.

12 (2) A review of the amount of and nature of any contact
13 between the child and his or her parents or legal guardians and
14 other members of his or her extended family since the time of
15 placement. Although the extended family of each child shall be
16 reviewed on a case-by-case basis, “extended family” for the
17 purpose of this paragraph shall include, but not be limited to, the
18 child’s siblings, grandparents, aunts, and uncles.

19 (3) An evaluation of the child’s medical, developmental,
20 scholastic, mental, and emotional status.

21 (4) A preliminary assessment of the eligibility and
22 commitment of any identified prospective adoptive parent or legal
23 guardian, particularly the caretaker, to include a social history
24 including screening for criminal records and prior referrals for
25 child abuse or neglect, the capability to meet the child’s needs, and
26 the understanding of the legal and financial rights and
27 responsibilities of adoption and guardianship. If a proposed
28 guardian is a relative of the minor, and the relative was assessed
29 for foster care placement of the minor prior to January 1, 1998, the
30 assessment shall also consider, but need not be limited to, all of the
31 factors specified in subdivision (a) of Section 361.3.

32 (5) The relationship of the child to any identified prospective
33 adoptive parent or legal guardian, the duration and character of the
34 relationship, the motivation for seeking adoption or guardianship,
35 and a statement from the child concerning placement and the
36 adoption or guardianship, unless the child’s age or physical,
37 emotional, or other condition precludes his or her meaningful
38 response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, “relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(l) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 14.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to

1 achieve legal permanence for the child if efforts to reunify fail,
 2 including, but not limited to, efforts to maintain relationships
 3 between a child who is 10 years of age or older and has been in
 4 out-of-home placement in a group home for six months or longer
 5 from the date the child entered foster care and individuals who are
 6 important to the child, consistent with the child's best interests; the
 7 progress made; and, where relevant, the prognosis for return of the
 8 child to the physical custody of his or her parent or legal guardian;
 9 and shall make his or her recommendation for disposition. If the
 10 child is a member of a sibling group described in paragraph (3) of
 11 subdivision (a) of Section 361.5, the report and recommendation
 12 may also take into account those factors described in subdivision
 13 (e) relating to the child's sibling group. If the recommendation is
 14 not to return the child to a parent or legal guardian, the report shall
 15 specify why the return of the child would be detrimental to the
 16 child. The social worker shall provide the parent or legal guardian,
 17 counsel for the child, and any court-appointed child advocate with
 18 a copy of the report, including his or her recommendation for
 19 disposition, at least 10 calendar days prior to the hearing. In the
 20 case of a child removed from the physical custody of his or her
 21 parent or legal guardian, the social worker shall, at least 10
 22 calendar days prior to the hearing, provide a summary of his or her
 23 recommendation for disposition to any foster parents, relative
 24 caregivers, and certified foster parents who have been approved
 25 for adoption by the State Department of Social Services when it
 26 is acting as an adoption agency in counties that are not served by
 27 a county adoption agency or by a licensed county adoption agency,
 28 community care facility, or foster family agency having the
 29 physical custody of the child.

30 (d) Prior to any hearing involving a child in the physical
 31 custody of a community care facility or a foster family agency that
 32 may result in the return of the child to the physical custody of his
 33 or her parent or legal guardian, or in adoption or the creation of a
 34 legal guardianship, the facility or agency shall file with the court
 35 a report containing its recommendation for disposition. Prior to the
 36 hearing involving a child in the physical custody of a foster parent,
 37 a relative caregiver, or a certified foster parent who has been
 38 approved for adoption by the State Department of Social Services
 39 when it is acting as an adoption agency or by a licensed adoption
 40 agency, the foster parent, relative caregiver, or the certified foster

1 parent who has been approved for adoption by the State
2 Department of Social Services when it is acting as an adoption
3 agency in counties that are not served by a county adoption agency
4 or by a licensed county adoption agency, may file with the court
5 a report containing his or her recommendation for disposition. The
6 court shall consider the report and recommendation filed pursuant
7 to this subdivision prior to determining any disposition.

8 (e) At the review hearing held six months after the initial
9 dispositional hearing, the court shall order the return of the child
10 to the physical custody of his or her parent or legal guardian unless
11 the court finds, by a preponderance of the evidence, that the return
12 of the child to his or her parent or legal guardian would create a
13 substantial risk of detriment to the safety, protection, or physical
14 or emotional well-being of the child. The social worker shall have
15 the burden of establishing that detriment. The failure of the parent
16 or legal guardian to participate regularly and make substantive
17 progress in court-ordered treatment programs shall be prima facie
18 evidence that return would be detrimental. In making its
19 determination, the court shall review and consider the social
20 worker's report and recommendations and the report and
21 recommendations of any child advocate appointed pursuant to
22 Section 356.5; and shall consider the efforts or progress, or both,
23 demonstrated by the parent or legal guardian and the extent to
24 which he or she availed himself or herself to services provided.

25 Whether or not the child is returned to a parent or legal guardian,
26 the court shall specify the factual basis for its conclusion that the
27 return would be detrimental or would not be detrimental. The court
28 also shall make appropriate findings pursuant to subdivision (a) of
29 Section 366; and, where relevant, shall order any additional
30 services reasonably believed to facilitate the return of the child to
31 the custody of his or her parent or legal guardian. The court shall
32 also inform the parent or legal guardian that if the child cannot be
33 returned home by the 12-month permanency hearing, a proceeding
34 pursuant to Section 366.26 may be instituted. This section does not
35 apply in a case where, pursuant to Section 361.5, the court has
36 ordered that reunification services shall not be provided.

37 If the child was under the age of three years on the date of the
38 initial removal, or is a member of a sibling group described in
39 paragraph (3) of subdivision (a) of Section 361.5, and the court
40 finds by clear and convincing evidence that the parent failed to

1 participate regularly and make substantive progress in a
2 court-ordered treatment plan, the court may schedule a hearing
3 pursuant to Section 366.26 within 120 days. If, however, the court
4 finds there is a substantial probability that the child, who was under
5 the age of three years on the date of initial removal or is a member
6 of a sibling group described in paragraph (3) of subdivision (a) of
7 Section 361.5, may be returned to his or her parent or legal
8 guardian within six months or that reasonable services have not
9 been provided, the court shall continue the case to the 12-month
10 permanency hearing.

11 For the purpose of placing and maintaining a sibling group
12 together in a permanent home, the court, in making its
13 determination to schedule a hearing pursuant to Section 366.26 for
14 some or all members of a sibling group, as described in paragraph
15 (3) of subdivision (a) of Section 361.5, shall review and consider
16 the social worker's report and recommendations. Factors the
17 report shall address, and the court shall consider, may include, but
18 need not be limited to, whether the sibling group was removed
19 from parental care as a group, the closeness and strength of the
20 sibling bond, the ages of the siblings, the appropriateness of
21 maintaining the sibling group together, the detriment to the child
22 if sibling ties are not maintained, the likelihood of finding a
23 permanent home for the sibling group, whether the sibling group
24 is currently placed together in a preadoptive home or has a
25 concurrent plan goal of legal permanency in the same home, the
26 wishes of each child whose age and physical and emotional
27 condition permits a meaningful response, and the best interest of
28 each child in the sibling group. The court shall specify the factual
29 basis for its finding that it is in the best interest of each child to
30 schedule a hearing pursuant to Section 366.26 in 120 days for some
31 or all of the members of the sibling group.

32 If the child was removed initially under subdivision (g) of
33 Section 300 and the court finds by clear and convincing evidence
34 that the whereabouts of the parent are still unknown, or the parent
35 has failed to contact and visit the child, the court may schedule a
36 hearing pursuant to Section 366.26 within 120 days. If the court
37 finds by clear and convincing evidence that the parent has been
38 convicted of a felony indicating parental unfitness, the court may
39 schedule a hearing pursuant to Section 366.26 within 120 days.

1 If the child had been placed under court supervision with a
2 previously noncustodial parent pursuant to Section 361.2, the
3 court shall determine whether supervision is still necessary. The
4 court may terminate supervision and transfer permanent custody
5 to that parent, as provided for by paragraph (1) of subdivision (b)
6 of Section 361.2.

7 In all other cases, the court shall direct that any reunification
8 services previously ordered shall continue to be offered to the
9 parent or legal guardian pursuant to the time periods set forth in
10 subdivision (a) of Section 361.5, provided that the court may
11 modify the terms and conditions of those services.

12 If the child is not returned to his or her parent or legal guardian,
13 the court shall determine whether reasonable services that were
14 designed to aid the parent or legal guardian in overcoming the
15 problems that led to the initial removal and the continued custody
16 of the child have been provided or offered to the parent or legal
17 guardian. The court shall order that those services be initiated,
18 continued, or terminated.

19 (f) The permanency hearing shall be held no later than 12
20 months after the date the child entered foster care, as that date is
21 determined pursuant to subdivision (a) of Section 361.5. At the
22 permanency hearing, the court shall determine the permanent plan
23 for the child, which shall include a determination of whether the
24 child will be returned to the child's home and, if so, when, within
25 the time limits of subdivision (a) of Section 361.5. The court shall
26 order the return of the child to the physical custody of his or her
27 parent or legal guardian unless the court finds, by a preponderance
28 of the evidence, that the return of the child to his or her parent or
29 legal guardian would create a substantial risk of detriment to the
30 safety, protection, or physical or emotional well-being of the child.
31 The social worker shall have the burden of establishing that
32 detriment. The court shall also determine whether reasonable
33 services that were designed to aid the parent or legal guardian to
34 overcome the problems that led to the initial removal and
35 continued custody of the child have been provided or offered to the
36 parent or legal guardian. For each youth 16 years of age and older,
37 the court shall also determine whether services have been made
38 available to assist him or her in making the transition from foster
39 care to independent living. The failure of the parent or legal
40 guardian to participate regularly and make substantive progress in

1 court-ordered treatment programs shall be prima facie evidence
2 that return would be detrimental. In making its determination, the
3 court shall review and consider the social worker's report and
4 recommendations and the report and recommendations of any
5 child advocate appointed pursuant to Section 356.5, shall consider
6 the efforts or progress, or both, demonstrated by the parent or legal
7 guardian and the extent to which he or she availed himself or
8 herself of services provided, and shall make appropriate findings
9 pursuant to subdivision (a) of Section 366.

10 Whether or not the child is returned to his or her parent or legal
11 guardian, the court shall specify the factual basis for its decision.
12 If the child is not returned to a parent or legal guardian, the court
13 shall specify the factual basis for its conclusion that the return
14 would be detrimental. The court also shall make a finding pursuant
15 to subdivision (a) of Section 366.

16 (g) If the time period in which the court-ordered services were
17 provided has met or exceeded the time period set forth in
18 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
19 appropriate, and a child is not returned to the custody of a parent
20 or legal guardian at the permanency hearing held pursuant to
21 subdivision (f), the court shall do one of the following:

22 (1) Continue the case for up to six months for a permanency
23 review hearing, provided that the hearing shall occur within 18
24 months of the date the child was originally taken from the physical
25 custody of his or her parent or legal guardian. The court shall
26 continue the case only if it finds that there is a substantial
27 probability that the child will be returned to the physical custody
28 of his or her parent or legal guardian and safely maintained in the
29 home within the extended period of time or that reasonable
30 services have not been provided to the parent or legal guardian. For
31 the purposes of this section, in order to find a substantial
32 probability that the child will be returned to the physical custody
33 of his or her parent or legal guardian and safely maintained in the
34 home within the extended period of time, the court shall be
35 required to find all of the following:

36 (A) That the parent or legal guardian has consistently and
37 regularly contacted and visited with the child.

38 (B) That the parent or legal guardian has made significant
39 progress in resolving problems that led to the child's removal from
40 the home.

1 (C) The parent or legal guardian has demonstrated the capacity
2 and ability both to complete the objectives of his or her treatment
3 plan and to provide for the child's safety, protection, physical and
4 emotional well-being, and special needs.

5 For purposes of this subdivision, the court's decision to continue
6 the case based on a finding or substantial probability that the child
7 will be returned to the physical custody of his or her parent or legal
8 guardian is a compelling reason for determining that a hearing held
9 pursuant to Section 366.26 is not in the best interests of the child.

10 The court shall inform the parent or legal guardian that if the
11 child cannot be returned home by the next permanency review
12 hearing, a proceeding pursuant to Section 366.26 may be
13 instituted. The court may not order that a hearing pursuant to
14 Section 366.26 be held unless there is clear and convincing
15 evidence that reasonable services have been provided or offered to
16 the parent or legal guardian.

17 (2) Order that a hearing be held within 120 days, pursuant to
18 Section 366.26, but only if the court does not continue the case to
19 the permanency planning review hearing and there is clear and
20 convincing evidence that reasonable services have been provided
21 or offered to the parents or legal guardians.

22 (3) Order that the child remain in long-term foster care, but
23 only if the court finds by clear and convincing evidence, based
24 upon the evidence already presented to it, including a
25 recommendation by the State Department of Social Services when
26 it is acting as an adoption agency in counties that are not served by
27 a county adoption agency or by a licensed county adoption agency,
28 that there is a compelling reason for determining that a hearing
29 held pursuant to Section 366.26 is not in the best interest of the
30 child because the child is not a proper subject for adoption and has
31 no one willing to accept legal guardianship. For purposes of this
32 section, a recommendation by the State Department of Social
33 Services when it is acting as an adoption agency in counties that
34 are not served by a county adoption agency or by a licensed county
35 adoption agency that adoption is not in the best interest of the child
36 shall constitute a compelling reason for the court's determination.
37 That recommendation shall be based on the present circumstances
38 of the child and may not preclude a different recommendation at
39 a later date if the child's circumstances change.



1 If the court orders that a child who is 10 years of age or older
2 remain in long-term foster care at a group home, the court shall
3 determine whether the agency has made reasonable efforts to
4 maintain the child's relationships with individuals other than the
5 child's siblings who are important to the child, consistent with the
6 child's best interests, and may make any appropriate order to
7 ensure that those relationships are maintained.

8 (h) In any case in which the court orders that a hearing pursuant
9 to Section 366.26 shall be held, it shall also order the termination
10 of reunification services to the parent or legal guardian. The court
11 shall continue to permit the parent or legal guardian to visit the
12 child pending the hearing unless it finds that visitation would be
13 detrimental to the child. The court shall make any other
14 appropriate orders to enable the child to maintain relationships
15 with individuals, other than the child's siblings, who are important
16 to the child, consistent with the child's best interests.

17 (i) Whenever a court orders that a hearing pursuant to Section
18 366.26 shall be held, it shall direct the agency supervising the child
19 and the licensed county adoption agency, or the State Department
20 of Social Services when it is acting as an adoption agency in
21 counties that are not served by a county adoption agency, to
22 prepare an assessment that shall include:

23 (1) Current search efforts for an absent parent or parents or
24 legal guardians.

25 (2) A review of the amount of and nature of any contact
26 between the child and his or her parents or legal guardians and
27 other members of his or her extended family since the time of
28 placement. Although the extended family of each child shall be
29 reviewed on a case-by-case basis, "extended family" for the
30 purpose of this paragraph shall include, but not be limited to, the
31 child's siblings, grandparents, aunts, and uncles.

32 (3) An evaluation of the child's medical, developmental,
33 scholastic, mental, and emotional status.

34 (4) A preliminary assessment of the eligibility and
35 commitment of any identified prospective adoptive parent or legal
36 guardian, particularly the caretaker, to include a social history
37 including screening for criminal records and prior referrals for
38 child abuse or neglect, the capability to meet the child's needs, and
39 the understanding of the legal and financial rights and
40 responsibilities of adoption and guardianship. If a proposed

1 guardian is a relative of the minor, and the relative was assessed
2 for foster care placement of the minor prior to January 1, 1998, the
3 assessment shall also consider, but need not be limited to, all of the
4 factors specified in subdivision (a) of Section 361.3.

5 (5) The relationship of the child to any identified prospective
6 adoptive parent or legal guardian, the duration and character of the
7 relationship, the motivation for seeking adoption or guardianship,
8 and a statement from the child concerning placement and the
9 adoption or guardianship, unless the child's age or physical,
10 emotional, or other condition precludes his or her meaningful
11 response, and if so, a description of the condition.

12 (6) A description of efforts to be made to identify a prospective
13 adoptive parent or legal guardian, including, but not limited to,
14 child specific recruitment and listing on an adoption exchange.

15 (7) An analysis of the likelihood that the child will be adopted
16 if parental rights are terminated.

17 (j) If, at any hearing held pursuant to Section 366.26, a
18 guardianship is established for the minor with a relative, and
19 juvenile court dependency is subsequently dismissed, the relative
20 shall be eligible for aid under the Kin-GAP program as provided
21 in Article 4.5 (commencing with Section 11360) of Chapter 2 of
22 Part 3 of Division 9.

23 (k) As used in this section, "relative" means an adult who is
24 related to the minor by blood, adoption, or affinity within the fifth
25 degree of kinship, including stepparents, stepsiblings, and all
26 relatives whose status is preceded by the words "great,"
27 "great-great," or "grand," or the spouse of any of those persons
28 even if the marriage was terminated by death or dissolution.

29 (l) For purposes of this section, evidence of any of the
30 following circumstances may not, in and of itself, be deemed a
31 failure to provide or offer reasonable services:

32 (1) The child has been placed with a foster family that is
33 eligible to adopt a child, or has been placed in a preadoptive home.

34 (2) The case plan includes services to make and finalize a
35 permanent placement for the child if efforts to reunify fail.

36 (3) Services to make and finalize a permanent placement for
37 the child, if efforts to reunify fail, are provided concurrently with
38 services to reunify the family.

39 SEC. 15. Section 16010.6 of the Welfare and Institutions
40 Code is amended to read:

16010.6. (a) As soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver. This requirement is declaratory of existing law.

(b) The Judicial Council shall adopt a rule of court directing the attorney for a child for whom a dependency petition has been filed, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule does not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

SEC. 16. *Section 1.5 of this bill incorporates amendments to Section 3110.5 of the Family Code proposed by both this bill and AB 3081. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, but this bill becomes operative first, (2) each bill amends Section 3110.5 of the Family Code, and (3) this bill is enacted after AB 3081, in which case Section 3110.5 of the Family Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 3081, at which time Section 1.5 of this bill shall become operative.*

SEC. 17. Section 14.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2807. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2807, in which case Section 14 of this bill shall not become operative.

~~SEC. 17.~~

SEC. 18. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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